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No. 05-1461

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SUPREME COURT, U.S.

In the
Supreme Court of the United States

MARINE MECHANICAL CORPORATION,
Petitioner,

v.

JOHN T. EASTMAN,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF IN OPPOSITION

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Questions Presented for Review

Whether Respondent's complaint filed in the state court of Ohio was properly removed to the United States District Court.

Whether Respondent's claims for wrongful termination in violation of public policy are claims "arising under" the Constitution or laws of the United States.

Parties

The caption of the Petitioner's Petition contains the names of all parties to this action.

Disclosure Statement

Respondent is an individual.

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Statutory Provisions at Issue

This case involves 28 U.S.C. § 1331, which provides: "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

Statement of the Case

Respondent agrees with the majority of the statements made in Petitioner's Statement of the Case. However, Petitioner's Statement of the Case incorrectly asserts that "[Respondent] premised his wrongful discharge claim solely upon two federal statutes, 18 U.S.C. § 287 and 31 U.S.C. § 3729." Petition at page 3. Respondent's Complaint, which was filed in an Ohio state court, contained a single cause of action for wrongful discharge in violation of public policy. This claim arises under Ohio common law. *Greeley v. Miami Valley Maint. Contractors, Inc.*, 49 Ohio St.3d 228, 551 N.E.2d 981 (1990). Respondent's claim does not arise under federal law.

Reasons for Denying the Petition

Respondent chose to file his claim in an Ohio state court. His single claim of employment discrimination arises under the common law of Ohio. The state court will not be required to determine any question of federal law. The case was thus improvidently removed from the state court to a federal court as there was never federal jurisdiction.

The type of "federal question" or "arising under" jurisdiction described in 28 U.S.C. § 1331 is governed by the well-pleaded-complaint rule. This "rule" holds that "federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Caterpillar Inc. v. Williams*, 482 U.S. 386 (1987). Federal jurisdiction is present when the complaint invokes federal law as the basis for relief. Federal jurisdiction is not present when the facts alleged in support of a state law claim might also support a federal claim. "The [well-pleaded-complaint] rule makes the plaintiff the master of the claim; he or she may avoid federal jurisdiction by exclusive reliance on state law." *Id. See also The Fair v. Kohler Die & Specialty Co.*, 228 U.S. 22 (1913). "[A] suit arises under the Constitution and laws of the United States only when the plaintiff's statement of his own cause of action shows that it is based upon those laws or that Constitution." *Louisville & N. R. Co. v. Mottley*, 211 U.S. 149 (1908). "As a general rule, absent diversity jurisdiction, a case will not be removable if the complaint does not affirmatively allege a federal claim." *Beneficial Nat. Bank v. Anderson*, 539 U.S. 1 (2003).

Respondent filed his one-count wrongful discharge complaint in the Cuyahoga County (Ohio) Court of Common Pleas. In his complaint, Eastman alleged that Petitioner's decision to discharge him violated the public policy of the

State of Ohio. These "public policy" employment claims are a part of the common law of Ohio, and were first recognized by the Ohio Supreme Court in *Greeley v. Miami Valley Maint. Contractors, Inc.*, 49 Ohio St.3d 228, 551 N.E.2d 981 (1990). Under Ohio law, a "public policy" claim consists of four elements:

1. [A] clear public policy existed and was manifested in a state or federal constitution, statute or administrative regulation, or in the common law;

2. That dismissing employees under circumstances like those involved in the plaintiff's dismissal would jeopardize the public policy;

3. The plaintiff's dismissal was motivated by conduct related to the public policy;

4. The employer lacked overriding legitimate business justification for the dismissal.

Collins v. Rizkana, 73 Ohio St.3d 65, 69; 652 N.E.2d 653 (1995).

In his initial complaint filed in state court, Respondent cited the federal False Claims Act as the source of public policy he was required to plead under state law. Petitioner removed the case to the United States District Court for the Northern District of Ohio, claiming that Respondent's mere mention of the federal False Claims Act in his complaint invoked federal question jurisdiction. The District Court refused to remand the case to state court and eventually granted Petitioner's motion for summary judgment. Pet. App. B.

This Court recently concluded that a two-part test is to be used when deciding whether a federal court's "arising under" jurisdiction has been invoked: (1) the actual existence in the case of a "contested" and "substantial" federal issue "indicating a serious federal interest in claiming the advantages thought to be inherent in a federal forum," and (2) where the exercise of federal court jurisdiction will be "consistent with congressional judgment about the sound division of labor between state and federal courts. . . ." *Grable & Sons Metal Prod. Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308 (2005).

Grable did not alter or weaken the holding in *Merrell Dow Pharm., Inc. v. Thompson*, 478 U.S. 804 (1986) that "a complaint alleging a violation of a federal statute as an element of a state cause of action, when Congress has determined that there should be no private, federal cause of action for the violation, does not state a claim 'arising under the Constitution, laws, or treaties of the United States.'"

The Court of Appeals correctly concluded that neither prong of *Grable*'s two-part test had been satisfied when Respondent filed his case in the state court. The Court of Appeals found there to be no "contested" or "substantial" issue as to whether the federal False Claims Act does or should prohibit the submission of false or fraudulent claims to the government. *Eastman v. Marine Mechanical Corporation*, 438 F. 3d 544, 552 (6th Cir. 2006). The Court of Appeals also concluded that the absence of a private right of action available to Respondent under the False Claims Act "is an important signal to [Congress'] view of the substantiality of the federal question involved." *Id.* The Court of Appeals cited with approval the following language from this Court's *Merrell Dow* opinion:

> We simply conclude that the congressional determination that there should be no federal remedy for the violation of this federal statute is tantamount to a congressional conclusion that the presence of a claimed violation of the statute as an element of a state cause of action is insufficiently 'substantial' to confer federal-question jurisdiction.

Id., citing *Merrell Dow*, 478 U.S. 804, 814 (1986).

As the master of his complaint, Respondent chose to file his claim arising under Ohio common law in an Ohio state court. No federal claim was asserted by Respondent in his state court complaint. No claim "arising under" the Constitution or federal law was ever asserted by Respondent. The Court of Appeals correctly concluded that there was no federal court jurisdiction over Respondent's claims.

Conclusion

For the reasons stated above, Respondent John T. Eastman respectfully requests that the Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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